

been about forty years of age ; and I cannot understand why the rule should not obtain in both cases, as in each, the decision of the question must be governed by the expectation of human life, and the Court of Appeals says there is a better chance of justice being effected, when that question is involved, by applying, by analogy, our rule, than by consulting tables framed upon observations made in other ages, and in other countries.

My opinion, therefore, is that the Chancery rule is to be adopted, and I shall refer the case again to the Auditor for that purpose, when proof may be supplied of the state of the health of Mrs. Mary Ayres, on the 16th day of January, 1850.

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[The case was accordingly referred to the Auditor, for the purpose of stating an account in conformity with these views.

On the 3d of April, the Auditor stated his account C, to which the complainant excepted, on the ground that there had not been a sufficient amount granted him to pay said annuity ; and on the 26th of September following, the Chancellor delivered the following opinion :]

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#### THE CHANCELLOR:

This case is brought before the court upon exceptions to the report of the Auditor, made in pursuance of the order of this court, of the 16th of January last ; and before the exceptions are considered, it becomes necessary to inquire, whether that order is so far conclusive, as to be binding upon the court ; even though the views now presented, and the evidence subsequently taken, should make it apparent, that the ratification of the report would result in injustice.

Upon examination of the cases referred to in the argument, and especially that of *Clagett, Administrator vs. Crawford, Trustee*, 12 G. & J., 275, I am quite satisfied that although the report of the Auditor, may be in exact conformity with the views expressed, and the directions given in the former order ; it is entirely competent to the court to reject the report, and order